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February 1, 1999

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Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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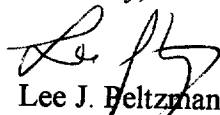
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 98-222
RM-9407
Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Lordsburg and Hurley, New Mexico

Dear Ms. Salas:

Transmitted herewith, on behalf of BBC Radio, is an original and four (4) copies of its Comments in MM Docket No. 98-222. Please contact the undersigned should the Commission have any questions with respect to these Comments.

Sincerely,


Lee J. Heltzman
Counsel for
BBC RADIO

Enclosure

cc: Leslie K. Shapiro (w/encl.) (via hand-delivery)

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 98-222
Table of Allotments)	RM-9407
FM Broadcast Stations)	
(Lordsburg and Hurley, New Mexico)	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS

BBC Radio ("BBC"), by its attorney and pursuant to Sections 1.415 and 1.420 of the Commission's rules, hereby respectfully files its Comments in the above-captioned rulemaking proceeding.¹ By *Notice of Proposed Rule Making*, DA 98-2491, released December 11, 1998, ("NPRM")², the Commission proposed the amendment of its FM Table of Allotments to substitute Channel 288C1 for 289C3 at Lordsburg, New Mexico and allot Channel 288C1 to Hurley, New Mexico, as that community's first local aural service, and modify BBC's construction permit (BPH-970725MO) to specify Hurley as its community of license.

BK supports the substitution of Channel 288C1 for Channel 289C3 and the allotment of Channel 288C1 to Hurley pursuant to Section 1.420(i) of the Commission's rules. As the Commission noted in its NPRM, Channel 288C1 can be allotted to Hurley at BBC's desired transmitter site in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers north to avoid a short-spacing to Channel 288B, El Porven, Chihuahua, Mexico. The Commission

¹ BBC incorporates by reference its earlier-filed Petition for Rule Making in this proceeding.

further noted that its own engineering study showed that the station would not provide service to any urbanized area and that, while the allotment of Channel 288C1 would result in a loss of service to Two Thousand Nine Hundred Seventy-two (2,972) persons within a Two Thousand Eight Hundred Sixty-nine (2,869) square kilometer area, over fifty percent (50%) of that area would continue to receive three or more FM services.

See NPRM at para. 4.

As shown by BBC in its Petition for Rule Making , the allotment of Channel 288C1 at Hurley, New Mexico will result in the provision of 1mV/m service to Forty-five Thousand Nine Hundred Forty (45,940) persons, an increase of Forty-two Thousand Five Hundred Seventy (42,570) persons over its presently authorized facilities. Additionally, the reallocation will not result in the removal of an existing service, since the station is not yet built and on the air and Lordsburg, in any event, will continue to receive a local aural service from Station KQTN(FM). See NPRM at para 3. Thus, the reallocation would result in a preferential arrangement of allotments under the FCC's FM allotment priorities, since it would provide a first local aural transmission service to Hurley without removing the sole local service from Lordsburg.³ Accordingly, there would be significant public interest benefits which would accrue from the grant of the instant NPRM.

As noted earlier by BBC, in the event that the Commission substitutes Channel 288C1 for Channel 289C3 and allots Channel 288C1 to Hurley, New Mexico, BBC will promptly modify its station permit, file an application for the new facilities and

² A copy of the NPRM is attached hereto.

³ Whereas reallocating the channel to Hurley would trigger priority three (3), retaining the channel in Lordsburg would only trigger priority four (4).

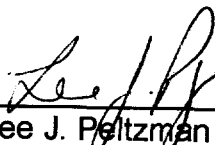
implement that application when granted by constructing its Hurley station in an expeditious manner.

Accordingly, for the reasons stated above, BBC supports its proposal contained in the Commission NPRM to substitute Channel 288C1 for Channel 289C3 at Lordsburg, reallocate Channel 288C1 to Hurley as that community's first local aural service (without depriving Lordsburg of its sole local aural service) and permit BBC to modify its station permit to specify Channel 288C1 at Hurley.

Respectfully Submitted,

BBC Radio

By:



Lee J. Peltzman
Its Attorney

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202-293-0011

February 1, 1999

station to increase the number of persons it can provide a 1 mV/m service from its present 3,370 people to 45,940 persons within a 16,480 square kilometer area. Moreover, the petitioner notes that the reallotment will not result in the removal of an existing service which the public has come to rely upon since the station is unbuilt and thus not on the air, citing Douglas, Tifton and Unionville, Georgia, 10 FCC Rcd 7706 (1995), Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995), Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (1995) and Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657 (1993). Finally, it points out that the proposal does not represent the removal of service from a rural area to serve an urbanized area because neither Hurley nor Lordsburg are located within such an area.

Technical Summary

4. Channel 288C1 can be allotted to Hurley in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (5.9 miles) north to avoid a short-spacing to Channel 288B, El Porven, Chihuahua, Mexico, and to accommodate petitioner's desired transmitter site.¹ In addition, the staff engineering study shows that while the allotment of Channel 288C1 at Hurley would result in a loss of service to 2,972 persons within a 2,869 square kilometer area, over 50% of this area would continue to receive three or more FM service. Further, the study confirms that if the channel is reallotted as proposed, the station will not provide service to any urbanized area. Mexican concurrence in the allotment is required since Hurley is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

5. We believe petitioner's proposal warrants consideration since the substitution of Channel 288C1 for Channel 289C3 at Lordsburg and its reallotment to Hurley could provide the community with its first local aural service without depriving Lordsburg of its sole local aural service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hurley, New Mexico	--	288C1
Lordsburg, New Mexico	250C, 279C3, 289C3	250C, 279C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

¹ The coordinates for Channel 288C1 at Hurley are 32-47-00 North Latitude and 108-08-30 West Longitude.

7. Interested parties may file comments on or before February 1, 1999, and reply comments on or before February 16, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lee J. Peltzman
Shainis & Peltzman, Chartered
Suite 290
1901 L Street, N.W.
Washington, D.C. 20036
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.


5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.

CERTIFICATE OF SERVICE

I, Michael S. Goldstein, Secretary in the law firm of Shainis & Peltzman, Chartered, do hereby certify that copies of the foregoing document were sent via hand-delivery on this 1st day of February, 1999, to the following:

Ms. Leslie K. Shapiro
Federal Communications Commission
Room 564
2000 M Street, N. W.
Washington, D. C. 20554



Michael S. Goldstein